

Draft Proposals for the UPU Istanbul Congress – Draft 1

This paper presents draft versions of 8 proposals that the United States could advance in the 2016 Istanbul Congress of the Universal Postal Union (UPU). These proposals articulate a US position that, first, implements US law and policy (postal, antitrust, and trade) and, second, advances US interests in the evolving international delivery services market. They adopt the view that the opening US position should reflect US law and US interests, not concessions in advance to imagined opposition. Nonetheless, these proposals aim for a basic level of political viability by incorporating reforms that appear likely to win support from a majority of industrialized countries if advocated by the US. The following table summarizes the draft proposals.

Proposal	Summary of Proposal
C1	<p>New Convention article 20bis specifying custom clearance procedures</p> <p>The 2012 UPU Convention does not include an article on customs clearance. UPU customs procedures, including forms CN 22 and CN 23, are set out in Regulations adopted by the POC (Postal Operations Council) without an explicit delegation of authority in the Convention. UPU customs privileges are available only to DOs (designated operators). Under the proposed new article, <i>for exchanges between industrialized countries only</i>, member countries would be obliged to provide similar customs treatment for similar items conveyed by DOs and non-DOs. <i>In all other circumstances</i>, the POC is delegated authority, subject to CA approval, to continue to adopt special customs procedures for DOs except that (1) countries may limit customs privileges for large shipments of commercial packages and (2) ETOEs (extraterritorial offices of exchange) may not use UPU customs procedures.</p>
C2	<p>Congress resolution instructing the UPU to work with the World Customs Organization to develop improved, non-discriminatory customs procedures for packages</p> <p>The proposed Congress resolution instructs the Council of Administration to work with the World Customs Organization to develop a twenty-first century approach towards customs clearance of international packages.</p>
T1	<p>New Convention article 29bis establishing a country specific system of delivery charges for delivery of inbound mail conveyed between industrialized countries</p> <p>The UPU Conventions of 2004, 2008, and 2012 declare that the UPU's overriding objective is to establish a "country specific system" for terminal dues that applies to all countries (both target and transitional systems are deemed "transitional arrangements"). But the current Convention does not define a country specific system nor apply one to any country. Under the proposed article, <i>for exchanges between industrialized countries only</i>, member countries would be obliged to introduce non-discriminatory country specific rates for delivery of inbound documents and packages. DOs could continue to make specific commercial deals with each other and with individual customers to the extent permitted by national postal and competition law. <i>In all other circumstances</i>, the UPU regime of preferential UPU-established delivery rates for DOS would continue to apply except as limited by new article 31bis (T2).</p>

Proposal	Summary of Proposal
T2	<p>New Convention article 31bis providing safeguards against misuse of preferential delivery rates for international mail sent to or from the target and transitional systems</p> <p>The proposed new article would prohibit misuse of preferential UPU terminal dues provisions intended to assist developing countries in the target and transitional systems. Member countries could decline to provide preferential rates to (1) large quantities of commercial packages and (2) specific flows of letter post items that are substantially in excess of 2015 levels (measured by number or weight). In addition, ETOEs could not access preferential rates. The proposed article would replace current prohibitions which depend on the discretion of DOs and may be used for anti-competitive purposes.</p>
T3	<p>Congress resolution requiring the CA to develop a plan for a global country specific remuneration system which preserves the single postal territory</p> <p>The proposed Congress resolution instructs the Council of Administration and the Postal Operations Council to develop a new terminal dues system that is fully aligned with domestic postage while continuing current economic support for needy developing countries.</p>
U1	<p>New Convention article 37bis delegating authority to the POC to adopt Regulations implementing the Convention with some limits</p> <p>No provision of current Convention defines the authority to the POC to adopt Regulations implementing the Convention. The POC acts without specific guidance or limitation even though Regulations are binding on member countries. The proposed article would define the authority of POC to adopt Regulations and require CA approval of Regulations governing the governments of member countries. Pursuant to the UPU Constitution, POC Regulations could not override national law.</p>
U2	<p>Amendment to Convention article 39 providing more flexible reservation procedures</p> <p>The proposal amends the UPU's strict reservations procedures to allow reservations to the Convention in a manner similar to the International Telecommunications Union.</p>
U3	<p>Congress resolution appointing a High Level Group of Government Official to develop a plan to restructure the Union to provide complete governmental and commercial functions</p> <p>Since the 1990s, repeated studies by the UPU — notably 2010 studies by Adrenaline and PricewaterhouseCoopers — have concluded that the market for international delivery services is changing radically and the Union should be restructured to provide complete separation of governmental and commercial functions. Yet institutional reform has been blocked by officials of the DOs and International Bureau. The proposed resolution creates an independent High Level Group of Government Officials and instructs it to develop a plan for restructuring the Union to separate governmental and operational functions. The High Level Group would be chaired by an individual appointed by Congress and include experts in international law and regulation appointed by 25 countries: the G-20 countries and 5 additional countries representing smaller countries. The report of the High Level Group would be due July 1, 2018, to allow the POC and CA time to prepare for the 2020 Congress.</p>

Draft Proposal C1

New Convention article 20bis establishing custom clearance procedures, mandating non-discriminatory procedures for shipments between industrialized countries, continuing UPU customs procedures for shipments to or from developing countries, and allowing countries to decline to apply UPU customs procedures to large shipments of commercial packages

Convention – Proposal

UNITED STATES OF AMERICA

Add a new article as follows [boldface indicates new text]:

Article 20bis

Customs control. Clearance procedures.

- 1. In this article, the following definitions apply.**
 - 1.1 The term “document” means any item suitable for conveyance by a designated operator or non-designated operator that (1) conforms to size and weight limits for small letters (P) or for large letters (G) established by the Postal Operations Council and (2) has a value of less than or equal to 300 SDR.**
 - 1.2 The term “package” means any item that is not a document and that is otherwise suitable for conveyance by a designated operator by letter post or parcel post and to similar items suitable for conveyance by a non-designated operator.**
 - 1.3 The term “commercial”, referring to a document or package, means a document or package which is exported or imported in the course of a business transaction, whether or not they are sold for money or exchanged.**
 - 1.4 The terms “industrialized country” and “developing country” shall be defined by resolution adopted by Congress or, in the absence of action by Congress, by the Council of Administration.**
- 2 For letter post and parcel post items conveyed between industrialized countries by designated operators, member countries shall apply customs laws and other laws relating to import or export in accordance with the following provisions.**
 - 2.1 Member countries shall ensure that customs laws and other laws relating to import or export, including liabilities for infractions thereof, shall be applied in the same manner to documents and packages conveyed by designated operators and by non-designated**

- operators. Similarity of items shall be assessed based upon objective criteria relevant to enforcement of customs laws and other laws relating to the import or export and shall not create an undue or unreasonable preference or competitive advantage for any operator or class of operators.
- 2.2** Paragraph 2.1 shall not prohibit member countries from adopting simplified or special rules for application of customs laws and other laws relating to the import or export of (1) documents; (2) documents and packages valued less than a specified amount; and/or (3) non-commercial documents and packages; provided that the principle set out in paragraph 2.1 of similar treatment for similar items conveyed by designated operators and non-designated operators is maintained.
- 2.3** The Council of Administration, acting in consultation with the Postal Operations Council and the Consultative Committee, shall collaborate with World Customs Organization and the International Civil Aviation Organization to encourage the industrialized countries to apply customs laws and other laws relating to the import or export of documents and packages in a manner that is as uniform among countries and as efficient and economical as practicable consistent with protection of the security and revenue of member countries.
- 3.** For letter post and parcel post items conveyed to or from developing countries, member countries shall apply customs laws and other laws relating to import or export in accordance with the following provisions.
- 3.1** Customs declarations and accompanying documentation shall not be required for documents unless specifically subject to customs declaration by the country of destination.
- 3.2** Customs declarations and accompanying documentation shall be required for packages unless specifically exempt from customs declaration by the country of destination.
- 3.3** The Postal Operations Council is authorized to adopt Regulations prescribing standard customs declarations and accompanying documentation to be completed by senders for presentation to customs authorities either physically or electronically in connection with the import or export of letter post items and parcel post items. Such Regulations shall be developed in consultation with the Council of Administration and shall be approved by that Council of Administration before becoming effective.
- 3.3.1** Designated operators shall take all reasonable steps to inform their customers on how to comply with customs formalities, and specifically to ensure that customs declarations are completed in full **and that all information provided is correct.**
- 3.3.2** Member countries shall apply customs laws and other laws relating to import or export based upon the documentation prescribed under paragraph 3.3, when all the

information required by customs authorities is available from such documentation.

- 3.3.3** The absence of a customs declaration prescribed **pursuant to paragraph 3.3** shall not, in any circumstances, involve the return to the office of origin of consignments of printed papers, serums, vaccines, infectious substances, radioactive materials and urgently required medicines which are difficult to obtain.
- 3.4** Member countries and designated operators shall accept no liability for customs declarations **for letter post and parcel post items** in whatever form these are made or for decisions taken by the Customs on examination of items submitted to customs control.
- 3.5** **A member country may decline to apply paragraph 3 and subparagraphs 3.1 through 3.4 to large quantities of commercial packages. At least six months before implementing this paragraph, the member country shall adopt measures which provide for application in an objective, impartial, and transparent manner and shall notify such measures to the International Bureau.**
- 3.6** **The provisions of paragraph 3 and subparagraphs 3.1 through 3.4 do not apply to the import or export of letter post items and parcel post dispatched by an extra-territorial office of exchange of a designated operator.**
- 4** **The Postal Operations Council is authorized to adopt Regulations prescribing standard forms, electronic message formats, and other documentation relating to the customs control of a postal items in the country of origin or the country of destination (1) for use by senders in providing information to designated operators and (2) for use by designated operators in exchanging information with other designated operators**
- 5.** **Notwithstanding any provision of this article, each member country retains the right to take such steps as it considers necessary and proper to protect its national revenue and security in extraordinary circumstances.**

Conforming amendments

- 1) This article replaces Convention Article 24(3), granting designated operators immunity from liability under customs laws, which should be deleted.
- 2) This article replaces the customs provisions in anti-ETOE resolutions of Congress, which should be deleted.

Notes

- 1) *Definitions*

Paragraph 1 defines the terms “document” and “package” for clarity. The corresponding

UPU terms are difficult to use because (1) “letter post” and “parcel post” refer only to items conveyed by designated operator and (2) “letter post” includes small packages as well as documents. Paragraph 1 also distinguishes commercial from non-commercial documents and packages based on the definition of “commercial item” in current UPU regulations (form CN 23).

Paragraph 1 also authorizes the Congress, or if Congress does not act, the Council of Administration to define the term “industrialized country” and “developing country” for purposes of this Article. In the 2012 Doha Congress, the UPU classified 29 countries as “industrialized.”

2) *Postal shipments between industrialized countries*

Paragraph 2 establishes the principle of non-discriminatory customs treatment for shipments conveyed *between industrialized countries*.

Paragraph 2.1 states the principle of non-discrimination. It provides that “customs laws and other laws relating to import or export shall be applied in the same manner to documents and packages conveyed by designated operators and by non-designated operators.” This principle is derived from the corresponding PAEA provision, 39 USC 407(e)(2). Unlike the current Convention, the proposed article subjects designated operators to liability for violations of customs laws.

Paragraph 2.1 also defines the concept of similar shipments. It is derived from the PAEA prohibition against US participation in postal agreements that create an undue or unreasonable preference for any operator. See 39 USC 407(b)(1). Specifically, this paragraph clarifies that “similarity” of items for purposes of this Article refers to similarity with respect to the enforcement of customs and other import/export laws. This clarification appears necessary because of oft-repeated claims by some designated operators that shipments conveyed by designated operators are per se dissimilar to shipments conveyed by non-designated operators because designated operators are different from non-designated operators.

Paragraph 2.2 allows, but does not require, member countries to establish simplified customs processing for (1) documents, (2) low value goods, and (3) “social mail” or non-commercial mail. It is derived from Article 139(6) of the EU Union Customs Code which provides for the possibility of special customs procedures for “traffic of negligible economic importance such as letters, postcards and printed matter and their electronic equivalents held on other media or to goods carried by travellers, provided that customs supervision and customs control possibilities are not thereby jeopardised.” The EU provision has been expanded to include the concept of special rules for low value goods (found in most customs codes) and social mail (a major concern of postal operators).

Paragraph 2.3 instructs the Council of Administration to work cooperatively with the World Customs Organization and International Civil Aviation Organization to promote uniform and simplified customs procedures for shipments between industrialized countries. UPU

cooperation with the WCO and ICAO is longstanding. The object of this paragraph is to provide a basis for UPU efforts to preserve the uniformity of customs procedures among countries which is available under current Regulations.

3) *Postal shipments to or from developing countries*

Paragraph 3 maintains the current UPU practice of authorizing the POC to define special customs procedures for letter post and parcel post items conveyed to or from developing countries, but with significant reforms. As in the current Convention, these special customs provisions are limited to the letter post and parcel post services of designated operators.

Paragraph 3.1 generally exempts documents (i.e., envelopes and flats) from customs declarations. Current Acts of the UPU do not provide this exemption. However, the Postal Service's International Mail Manual (IMM) instructs senders not to include a customs declaration with documents. See IMM (Jul 7, 2014) §§ 123.61, 242.22. Although there is no apparent legal basis for this IMM provision, it presumably describes customary practice and is incorporated in the draft proposal..

Paragraph 3.2 requires POC customs declarations to accompany all packages. This paragraph reflects current Letter Post Regulations, Arts. RL156(5), RL156(8). In apparent contradiction to POC Regulations, the Postal Service instructs "known mailers" not to include POC customs forms with some packages. See IMM (Jul 7, 2014) §§ 123.61, 242.22. Paragraph 3.2 follows current POC Regulations.

Paragraph 3.3 authorizes the POC to prescribe standard customs forms for clearance of postal items. Under the current Convention, there is no such delegation of authority. The POC assumes the authority to prescribe customs forms based on (apparently) a general grant of legislative authority in the General Regulations. Paragraph 3.3 further provides that POC customs Regulations shall be developed in consultation with the Council of Administration and shall be approved by that Council. Under current practice, CA approval is not required for any POC Regulations. For details of current UPU acts, see note 1 under Draft Proposal U1, below.

Paragraph 3.3.1 requires that "designated operators shall take all reasonable steps to inform their customers on how to comply with customs formalities, and specifically to ensure that customs declarations are completed in full." This provision repeats an obligations set out in Letter Post Regulations Art. RL156(12). Given its importance to the application of national customs laws, this injunction should be included in the Convention itself. The final portion of paragraph 3.3.1 includes a new provision ("and that all information provided is correct") that is not included in the current Regulation.

Paragraph 3.3.2 obliges member countries to provide customs clearance based on UPU customs forms "*when all the information required by the Customs is available.*" Although this is the current practice in most countries, the present Convention provides imposes for no such obligation. The proposed text is substantially derived from Revised Kyoto Convention, Annex J2, Standard 9, which includes the caveat, "when all the information required by the Customs is

available” from UPU customs forms. Although Annex J2 has been ratified by very few countries, the suggested language is clearer, and therefore preferable, to an unwritten general practice.

Paragraph 3.3.3 provides that member countries may not reject and return certain types of postal items. This extraordinary direction to national customs officials is set out in the POC Letter Post Regulations Art. RL156(10); Because this provision limits the authority of governments, it is preferable to include in the Convention.

Paragraph 3.4 continues the DOs’ immunity from liability under customs laws set out in the current Convention Art. 24(3).

Paragraph 3.5 authorizes member countries (not DOs) to refuse simplified UPU customs clearance to large quantities of commercial packages. “Packages” refers to small packets (in the letter post) as well as parcel post. Definition of the term “large quantities” is left to be decided by the destination country.

Paragraph 3.6 provides that the special POC customs rules for developing countries are not available to ETOEs (extraterritorial offices of exchange). Although complete liberalization of ETOEs would be substantially more pro-competitive than the current acts of the UPU, if relations between industrialized countries are appropriately reformed, then ETOEs become primarily a means of allowing DOs from developing countries to compete unfairly against DOs of industrialized countries.

4) *POC authority to set standards from communications between designated operators relating to customs*

For clarity, paragraph 4 authorizes the POC to prescribe standard forms, electronic message formats, and other documentation relating to the customs control (1) for use by senders in providing information to designated operators and (2) for use by DOs in exchanging information with other designated operators. Although the POC already adopts such Regulations, the purpose of this paragraph is to clarify what authority is delegated to the POC with respect to custom-related documentation and to clarify the distinction between operational documents, such as airwaybills and manifests, and customs declarations.

5) *Reservation of national powers in extraordinary circumstances*

Paragraph 5 reserves the right of each member country, in extraordinary circumstances, to take such steps as it considers necessary and proper to protect its national revenue and security. While this appears to be the current practice, it seems better to conform the acts to practice.

Draft Proposal C2

Congress resolution instructing the Council of Administration to work with the World Customs Organization to develop impartial, non-discriminatory, transparent, simplified, and efficient customs procedures

Proposal of a general nature

UNITED STATES OF AMERICA

Resolution [boldface indicates new text]

Towards a new global framework for customs processing of international packages

Congress,

Congress,

In view of

the rapidly changing postal markets and business environment influenced by globalization, market liberalization, regulation, and more sophisticated customer demands, [C9/2012]

Noting

a general decline in letter volumes [C44/2012] and, at the same time, the growth potential of UPU lightweight package services and the importance of security, transport and customs to the performance and competitiveness of those services, [C32/2012]

Considering

that the 21st century is the information society era, in which various forms of Internet-based economic activities are developing at unprecedented speed, and that the explosive development of e-commerce is changing people's way of life, [C33/2012]

Considering also

that demand for cross-border e-commerce transactions is increasing significantly as a result of the rapid development of e-commerce, and that there is huge potential for developing markets and increasing profit margins and that Posts are actively exploring ways of becoming main providers of cross-border e-commerce solutions, [C33/2012]

Bearing in mind

that the international postal market is increasingly characterized by liberalization, deregulation, and rising customer expectations, in addition to growing competition from technological substitution and private competitors, as well as between the public operators of member countries, [UPU Postal Operators Statement of Values]

Bearing in mind also

that many member countries are transforming their old designated operators into commercial entities, and introducing competition into the letter-post market, [C38/2012]

Bearing in mind also

that in liberalized markets, designated operators may find it advantageous to collaborate with, and use the services of, private sector commercial operators for the delivery of postal items, [C56/2008]

Bearing in mind also

that the fast-changing internal and external environment, which has led member countries to accelerate postal reform in recent years, and prompted an increasing separation of regulatory and operational functions [C13/2012]

Recognizing,

that customs processes form an integral and important part of the postal supply chain which facilitates free and secure global trade, [C55/2012]

Recognizing also

that governments of many Union member countries are liberalizing their postal markets, as a result of which possible differences between customs clearance procedures for designated operators and integrators **have** come under increasing scrutiny, [C56/2008]

Recognizing also

that expanded use of EDI messages to transmit customs data on postal items can create the conditions under which the customs clearance regulations are applied in the same manner to both postal shipments and similar shipments carried by private sector delivery firms, [C56/2008]

Recognizing also

that the use of electronic transmission of item-level information on postal items can benefit designated operators and customs or other security authorities by improving operations, expediting the flow of legitimate mail, reducing administrative costs and facilitating assessment procedures, while securing the international postal supply chain and enhancing the safety and

security of international mail exchanges, [C49/2012]

Recognizing also

the close cooperation between the UPU and the World Customs Organization and others to support the secure importation and exportation of mail by developing global EDI messaging standards and protocols consistent with the guidelines outlined in the Framework of Standards to Secure and Facilitate Global Trade, [C49/2012]

Concludes

that the primary commercial focus of designated operators and other providers of international delivery services in the future will be provision of delivery services for international packages, and in particular, for e-commerce products;

Concludes further

that the supply of international package delivery services will be characterized by vigorous competition among designated operators and between designated operators and other providers of international delivery services, as well as mutually beneficial collaboration between specific designated operators and/or providers of international delivery services,

Concludes further

that customs clearance procedures, which are critical to the provision of efficient and economical international package services, must become better adapted to the needs of the 21st century by ensuring that customs clearance procedures, consistent with the requirements for revenue and security of each member country:

- treat packages conveyed by designated operators and non-designated operator in accordance with the principles of impartiality, non-discrimination, and transparency;**
- provide customs clearance in a manner that is as simple, rapid, and economical as possible, with no or minimal customs processing for items valued less than “de minimis” values that are as inclusive as possible;**
- are standardized and uniform among countries, building upon and extending the benefits of the uniform global customs forms developed by the Universal Postal Union in the 20th century;**
- make appropriate use of of electronic data conveyed to customs authorities in the countries of export and import to expedite customs clearance procedures while enhancing security and revenue protection;**

Concludes further

that the increasingly competitive nature of the supply of international package delivery

services and the principle of separation of regulatory and operational functions requires the World Customs Organization to take the leading role in further modernization of customs procedures for international package delivery services;

Instructs

the Council of Administration

- **to develop, in cooperation with the Postal Operations Council and the Consultative Committee, a proposal for presentation to the World Customs Organization for development of impartial, non-discriminatory, transparent, simplified, and efficient customs procedures for international package delivery services suited to the needs of the twenty-first century and, in particular, to the needs of international e-commerce;**
- **to work closely with the World Customs Organization, the Postal Operations Council, the Consultative Committee, and other stakeholders to prepare the way for implementation of appropriate guidelines and agreements to accomplish modernization of the customs procedures for international package delivery services as rapidly as possible.**

Notes

- 1) The initial observations (to the last “bearing in mind”) recognize the changing market conditions and legal framework and, in particular, the increasing focus of designated operators on providing competitive international package delivery services. These observations are copied substantially verbatim from resolutions adopted by the 2012 Doha Congress or, in few cases, earlier congresses. References to the original resolutions are provided in brackets.
- 2) The “recognizing” clauses relate more particularly to modernization of customs procedures. These are also copied substantially verbatim from resolutions adopted by the 2012 Doha Congress or, in few cases, earlier congresses. References to the original resolutions are provided in brackets.
- 3) The “concluding” clauses are new text embodying conclusions that appear to follow from the preceding observations.
- 4) The “instructs” clauses instruct the Council of Administration to work with the World Customs Organization to develop a twenty-first century approach towards customs clearance of international packages that is impartial, non-discriminatory, transparent, efficient, and economical.

Draft Proposal T1

New Convention article 29bis establishing of a non-discriminatory, country specific system for terminal dues and inward land rates for postal items sent between industrialized countries

Convention – Proposal

UNITED STATES OF AMERICA

Add a new article as follows [boldface indicates new text]:

Article 29bis**Country specific system for delivery of documents and packages**

- 1. In this article, the terms “document”, “package”, “industrialized country”, and “developing country” have the same meaning as defined in article 20bis(1).**
- 2. Designated operators of countries in the country specific system shall make available to other designated operators, to non-designated operators, to all other customers (without regard to nationality or residence) rates, terms, and conditions for the delivery of inbound international documents and packages in accordance with the following provisions.**
 - 2.1 Designated operators shall make available the rates, terms, and conditions offered in their domestic service, on conditions identical to those proposed to their national customers.**
 - 2.2 To the extent necessary and appropriate, designated operators shall also make available simplified versions of domestic rates, terms, and conditions appropriate for the delivery of inbound international documents and packages.**
 - 2.3 To facilitate the exchange of international documents and packages, designated operators of countries in the country specific system may agree on a standard framework of terms and conditions for establishing rates for delivery of inbound international documents and packages. An agreement among designated operators under this paragraph shall not create an undue or unreasonable preference or competitive advantage for any operator or class of operators.**
 - 2.4 Member countries shall ensure that national postal, competition, and consumer protection laws governing the provision of domestic services of the designated operator(s) shall apply in the same manner to services for the delivery of inbound international documents and packages. This article shall not prohibit designated operators of the country specific system from participating in specific commercial**

arrangements where permitted by applicable national postal, competition, and consumer protection laws.

3. To resolve disputes regarding appropriate rates, terms, and conditions for the international delivery services specified in this article, affected parties shall have recourse to an independent domestic body such as a national regulator for postal services if established.

4. The country specific system shall include all industrialized countries and any developing country which declares to the International Bureau in writing that it wishes to join the country specific system.

Conforming amendments

This article would require deleting references to exchanges between designated operators of industrialized countries in articles 29 (terminal dues principles), 30 (target system), and 35 and 36 (inward land rates).

Notes

1) *Definitions*

This articles uses the same definitions as the new customs article 20bis.

2) *Country specific system for terminal dues and inward land rates*

This article, which would become effective in 2018, establishes the country specific system. The UPU Conventions of 2004, 2008, and 2012 declare such a system to be the objective for which both the target system and the transitional systems serve as “transitional arrangements”. Under this article, the country specific system is defined as a set of *member countries*, unlike the target and transitional systems which are defined as sets of *designated operators*.

Paragraph 2.1 declares the basic principle of the country specific system: that each country must provide delivery services for inbound international letter post mail on the same terms as applied to domestic mail. The text is derived, with minor revisions, from the current Convention, which requires designated operators from Group 1.1 countries to make available to each other “the rates, terms and conditions offered in their domestic service, on conditions “identical” to those proposed to their national customers”. Conv. Arts. 29(4)(1) and 29(4)(2).

Paragraph 2.2 provides that DOs shall establish simplified versions domestic tariffs suited to the delivery of inbound international mail. Generally, foreign post offices are “bulk mailers” for each other, but most domestic bulk tariffs are not well suited to foreign mailers.

Paragraph 2.3 makes clear that designated operators of countries in the country specific system may continue to agree on a standard schedule of weight steps and formats, standard

set of terms relating to priority, etc. In this manner, designated operators may continue to benefit from the operational simplifications achieved by a standard schedule of terminal dues even though the Convention no longer sets specific prices. For clarity, there is a further caveat that the standard system for quoting prices cannot be used for anti-competitive purposes.

Paragraph 2.4 provides that the disciplines of national postal, competition, and consumer protection laws apply to the inbound delivery services of the national DO in the same manner as they do to its domestic services. For example, the DO should not be able to engage in price-fixing of international rates any more than it can engage in price-fixing of domestic rates. By the same token, however, the DO may make commercial agreements and introduce rate distinctions for delivery of inbound mail in the same circumstances it is can in the domestic market (for example, in cases where the DO lacks market dominance).

3) *An impartial forum for dispute resolution*

Paragraph 3 requires that each member country in the country specific system shall give affected parties access to an impartial forum for dispute resolution, e.g., to the national postal regulator if one is established. This provision is similar to corresponding provisions advocated by the US and EU in 2006 in the Doha Round of trade negotiations and found in the WTO's 1998 Basic Telecommunications Agreement.

4) *Countries in the country specific system*

Paragraph 4 applies the country specific system to "industrialized countries." In the 2012 Congress, the UPU included 29 countries in its definition of "industrialized countries" based in a 1999 Congress resolution, C32/1999. In addition, as with the current target system, any other UPU member country may join the country specific system voluntarily.

Draft Proposal T2

New Convention article 31bis providing safeguards against misuse of preferential terminal dues and inward land rates granted to designated operators in the target and transitional systems

Convention – Proposal

UNITED STATES OF AMERICA

Add a new article as follows [boldface indicates new text]:

Article 31bis**Limits on the availability of preferential terminal dues and inward land rates**

- 1. In this article, the terms “document”, “package”, “commercial”, “industrialized country”, and “developing country” have the same meanings as defined in article 20bis(1).**
- 2. A member country may, in accordance with the provisions of paragraph 4, decline to apply the terminal dues or inward land rates provided under articles 29, 30, 31, 35, and 35 to the delivery of large quantities of commercial packages.**
- 3. A member country may, in accordance with the provisions of paragraph 4, decline to apply the terminal dues or inward land rates provided under articles 29, 30, 31, 35, and 35 to the delivery of an excessive quantity of letter post items received from the designated operator(s) of another country, if the member country determines that the relevant bilateral flow exceeds the levels established by paragraphs 3.1 or 3.2.**
 - 3.1. The destination member country determines that, excluding letter post items which are subject to paragraph 2, its designated operator(s) has received, in the relevant calendar year, a total number of letter post items or a total weight letter post items which exceeds the following levels —**
 - 3.1.1 in 2018, at least 115 percent of the number of letter post items or the total weight of the received from the same origin country in 2015;**
 - 3.1.2 in 2019, at least 120 percent of the number of letter post items or the total weight of the received from the same origin country in 2015;**
 - 3.1.3 in 2021, at least 125 percent of the number of letter post items or the total weight of the received from the same origin country in 2015; and**
 - 3.1.4 in 2022, at least 130 percent of the number of letter post items or the total weight of**

- the received from the same origin country in 2015.
- 3.2** The destination member country determines that, excluding letter post items which are subject to paragraph 2, its designated operator(s) has received, in the relevant calendar year, more than 5 tonnes of letter post items.
- 4.** A member country may invoke the limitations on the application of terminal dues or inward land rates provided under paragraphs 2 and 3 in accordance with the following procedures.
- 4.1** At least six months before implementing either paragraph 2 or paragraph 3, the member country shall adopt measures which provide for application in an objective, impartial, and transparent manner and shall notify such measures to the International Bureau.
- 4.2** For the delivery of inbound international packages affected by measures adopted under paragraph 4.1, the destination designated operator(s) shall apply the following charges.
- 4.2.1** A designated operator of a country in the country specific system shall apply charges in accordance with article 29bis.
- 4.2.2** A designated operator in the target system or transitional system shall apply charges equal to to 80% of the domestic tariff for equivalent items.
- 4.3** Each industrialized country shall establish dispute resolution procedures which give affected parties recourse to an independent domestic body such as a national regulator for postal services if established.
- 5** If a member country adopts measures to implement paragraph 2 and its designated operator(s) determines by sampling that commercial packages comprise 50 percent or more by weight of the flow of letter post received from the designated operator(s) of another member country, the destination designated operator(s) may require the origin designated operator(s) to separate the commercial packages from other letter post items or, if the absence of a separation of commercial packages, apply the terminal dues specified under paragraph 4.2 to all letter post items.
- 5.1** The sampling required by paragraph 5 shall be applied in accordance with the conditions specified in the Letter Post Regulations.
- 6.** The terminal dues and inward land rates established pursuant to articles 29, 30, 31, 35, and 36 shall not apply to delivery of letter post items and parcel post items dispatched by an extra-territorial office of exchange of a designated operator.

Conforming amendments

This article replaces current Convention article 28, posting abroad of letter-post items, which should be deleted. It also replaces the terminal dues provisions of several anti-ETOE Congress resolutions, which should be terminated.

Notes

1) *Definitions*

This articles uses the same definitions as the proposed customs article 20bis.

2) *Large quantities of commercial packages*

Paragraph 2 allows countries to refuse to give large quantities of commercial packages the benefit of preferential terminal dues and inward land rates. To do so, a country must follow the procedures in paragraph 4. “Packages” refers to small packets (in the letter post) as well as parcel post. The limitation applies only to packages defined commercial in current UPU customs regulations (the CN 23 form).

3) *Excessive quantities of letter post items*

Paragraph 3 allows countries to refuse to give excessive quantities of letter post items the benefit of preferential terminal dues. To do so, a country must follow the procedures in paragraph 4. The purpose of this paragraph is to prevent substantial abuses of preferential letter post rates by means of remail, i.e., taking items from an industrialized country and posting them in a developing country to take advantage of preferential terminal dues rates. To keep such abuses within tolerable bounds, the right of each developing country to preferential terminal dues is limited by to the quantity of letter post dispatched in 2015, plus a reasonable allowance for growth. The base quantity, which applies for each bilateral flow, is measured both by number of items and total weight to prevent a origin country from substituting heavy e-commerce packages for lightweight letters en masse. Commercial packages already caught by paragraph 2 are excluded from the count.

This article applies only to letter post items because (1) current UPU restrictions on remail apply only to letter post and (2) excessive remailing of packages that does not involve commercial packages subject to paragraph 2 appears unlikely.

4) *Procedures for controlling abuse of preferential delivery rates*

Paragraph 4 provides that, in lieu of preferential terminal dues, destination countries shall apply equivalent domestic postage (in the industrialized countries) or 80 percent of domestic tariffs (in the developing countries, the same standard as in the anti-remail article in the current Convention). The paragraph further provides that measures invoking these limits must be should be objective, impartial, and transparent, and notified to the International Bureau.

5) *Separation of commercial packages from other letter post*

Paragraph 5 provides a procedure to facilitate implement of the limitation on preferential terminal dues for commercial packages in cases in which commercial packages constitute a very high proportion of the letter post received from a specific country.

6) *Exclusion of ETOEs from preferential rates*

Paragraph 5 excludes ETOEs from preferential terminal dues rates.

Draft Proposal T3

Congress resolution instructing the Council of Administration and Postal Operations Council to develop a plan to extend the country specific system to all countries while preserving and improving the aid for needy developing countries provided by the current system

Proposal of a general nature

UNITED STATES OF AMERICA

Resolution [boldface indicates new text]

Towards a global country specific remuneration system that preserves the single postal territory and maintains necessary and appropriate support for designated operators in developing countries

Congress,

In view of

the rapidly changing postal markets and business environment influenced by globalization, market liberalization, regulation, and more sophisticated customer demands, [C9/2012]

Noting

a general decline in letter volumes [C44/2012] and, at the same time, the growth potential of UPU lightweight package services and the importance of security, transport and customs to the performance and competitiveness of those services, [C32/2012]

Considering

that the 21st century is the information society era, in which various forms of Internet-based economic activities are developing at unprecedented speed, and that the explosive development of e-commerce is changing people's way of life, [C33/2012]

Considering also

that demand for cross-border e-commerce transactions is increasing significantly as a result of the rapid development of e-commerce, and that there is huge potential for developing markets and increasing profit margins and that Posts are actively exploring ways of becoming main providers of cross-border e-commerce solutions, [C33/2012]

Bearing in mind

that the international postal market is increasingly characterized by liberalization, deregulation, and rising customer expectations, in addition to growing competition from technological substitution and private competitors, as well as between the public operators of member countries, [UPU Postal Operators Statement of Values]

Bearing in mind also

that many member countries are transforming their old designated operators into commercial entities, and introducing competition into the letter-post market, [C38/2012]

Bearing in mind also

that in liberalized markets, designated operators may find it advantageous to collaborate with, and use the services of, private sector commercial operators for the delivery of postal items, [C56/2008]

Bearing in mind also

that the fast-changing internal and external environment, which has led member countries to accelerate postal reform in recent years, and prompted an increasing separation of regulatory and operational functions [C13/2012]

Recognizing,

that the financial relations between designated operators should take into account the environment in which the Posts operate, particularly as regards the opening of postal markets to competition, [C57/2012]

Recognizing also

that the Conventions of 2004, 2008, and 2012 each declared that the “provisions of the present Convention concerning the payment of terminal dues are transitional arrangements, moving towards a country specific payment system at the end of the transition period”, [Conventions of 2004, 2008, 2012]

Recognizing also

the need to **achieve** compatibility between the remuneration aspects of letter-post services and the rules of the World Trade Organization, [C57/2012]

Concludes

that the 27th Congress of the Union, to be convened in 2020, should have before it for consideration, in addition to any other proposals relating to remuneration, a comprehensive plan which will realize the goal of a global country specific remuneration system that preserves the single postal territory and responds to the commercial and legal imperatives of

the increasingly competitive, package-centric markets of the future;

Instructs

the Council of Administration, in consultation with the Postal Operations Council and the Consultative Committee, to develop a plan for comprehensive revision of the remuneration provisions of the Convention which will —

- require the application of non-discriminatory country specific rates for the delivery of inbound international letter post and parcel post items in all member countries;**
- ensure that designated operators are fully compensated for the costs (including common, administrative, and capital costs) of delivering inbound international letter post and parcel post items, including designated operators in countries which, for reasons of national public policy, set domestic postage rates below the full costs of production;**
- allow designated operators the flexibility to conclude, where permitted by national law, specific commercial arrangements with each other, with non-designated operators, and with individual customers in order to better serve customers and protect market share in increasingly competitive markets;**
- eliminate incentives for arbitrage, remail, and the establishment of extraterritorial offices of exchange caused by misalignments between domestic postage and compensation rates for delivery of inward letter post and parcel post items;**
- foster efficient cooperation between designated operators and non-designated operators by eliminating unnecessary and unreasonable restrictions on use of UPU documentation or assignment of UPU-assigned codes such as those for International Mail Processing Centres;**
- sustain and modernize the single postal territory by continuing, where necessary and appropriate, preferential rates for the delivery of social mail dispatched from needy developing countries to industrialized countries; and**
- continue necessary and appropriate financial support for modernization of designated operators in needy developing countries.**

Notes

1) The initial observations (to the last “bearing in mind”) recognize the changing market conditions and legal framework and, in particular, the increasing focus of designated operators on competitive international package delivery services. These are copied substantially verbatim from resolutions adopted by the 2012 Doha Congress or, in few cases, earlier congresses. References to the original resolutions are provided in brackets. These are the same as in the resolution set out in Draft Proposal C2.

- 2) The “recognizing” clauses relate more particularly to modernization of terminal dues and inward land rates. These are copied substantially verbatim from resolutions adopted by the 2012 Doha Congress or prior Conventions. References to the original resolutions are provided in brackets.
- 3) The “concluding” clause is new text embodying conclusions that appear to follow from the preceding observations.
- 4) The “instructs” paragraphs instruct the Council of Administration to develop a comprehensive plan to introduce a global country specific remuneration system that would replace the current system of terminal dues and inward land rates. At the same time, CA plan is required to sustain the key public policy goals of the current terminal dues system: preservation of the single postal territory, aid for designated operators in developing countries, preferential rates for delivery of social mail sent from developing countries to industrialized countries, and permitting DOs to respond to competition. The CA plan should also eliminate anti-competitive provisions which the UPU has adopted to protect the current remuneration systems.

Draft Proposal U1**New Convention article 37bis defining the authority of the POC to adopt Regulations implementing the Convention**Convention – Proposal

UNITED STATES OF AMERICA

Add a new article as follows [boldface indicates new text]:

Article 37bis**Regulations implementing the Convention**

- 1 The Postal Operations Council is authorized to adopt such Regulations as may be necessary and proper to implement the provisions of this Convention, but such Regulations shall not exceed the authority expressly granted in this Convention.**
- 2 Except as provided in paragraph 3, a Regulation pursuant to paragraph 1 which establishes mandatory or voluntary operational standards for designated operators shall become effective upon approval of the Postal Operations Council.**
- 3 A Regulation pursuant to paragraph 1 which has the practical effect of limiting the authority of governments of member countries or which is determined by the Council of Administration to involve matters of fundamental policy or principle shall become effective upon approval of the Council of Administration.**
- 4. The Council of Administration shall not approve any provision of any Regulation which derogates from the legislation of any member country in respect of anything which is not expressly provided for by this Convention.**

Conforming amendments

None.

Notes

- 1) Nothing in the current Convention explicitly defines the authority of the Postal Operations Council to adopt Regulations implementing the Convention. The POC's general rulemaking authority is set out in article 113 of the 2012 General Regulations which lists the functions of the POC. The wording of paragraph (1)(13), the rulemaking provision dates from

1989 and reflects uncertainty in 1989 surrounding the concept that Congress could delegate legislative authority to a committee of the Union. In 1989, the delegation was to the Executive Council, predecessor of the CA, and the grant of legislative authority was made more palatable by portraying it as no more than authority to revise Regulations already blessed by Congress. In the 2012 General Regulations, article 113(1)(13) states:

The Postal Operations Council shall have the following functions: .
 . . (13) *Revises the Regulations of the Union within six months following the end of the Congress* unless the latter decides otherwise; in case of urgent necessity, the Postal Operations Council may also amend the said Regulations at other sessions; in both cases, *the Postal Operations Council shall be subject to Council of Administration guidance on matters of fundamental policy and principle.* [emphasis added]

In addition, article 141 of the 2012 General Regulations, which is of more recent origin, addresses “the procedures for submitting proposals to the POC concerning the preparation of new Regulations in the light of decisions taken by Congress.” It states:

(1) The Regulations of the Universal Postal Convention and the Postal Payment Services Agreement shall be drawn up by the Postal Operations Council *in the light of the decisions taken by Congress.* [emphasis added]

Thus, to the extent that the current acts of the UPU address delegation of rulemaking authority to the POC, it is clear that this authority subject to direction by Congress and the CA.

Paragraph 1 of proposed article would provide an explicit delegation of authority from Congress to the POC to adopt Regulations implementing the Convention. At the same time, the paragraph would limit the authority of the POC to the provisions of the Convention — a limitation not clear from current acts — and provide that with respect to certain Regulations the guidance of the CA must include approval by the CA.

2) Paragraph 2 allows the great bulk of Regulations — those regulating the operations of DOs— to become effectively immediately upon approval by the POC, as in the current acts.

3) Paragraph 3 provides that no Regulation which is binding on governments of member countries (as distinct from DOs) or which is determined by the Council of Administration to involve matters of fundamental policy or principle can become effective without approval of the Council of Administration.

4) Paragraph 4 provides that the CA shall not approve any Regulation which “derogates from the legislation of any member country in respect of anything which is not expressly provided for by this Convention”. This requirement gives effect to Article 24 of the Constitution which provides that “The provisions of the Acts of the Union shall not derogate from the legislation of any member country in respect of anything which is not expressly provided for by

those Acts.” If Congress has not “expressly provided” for a derogation of national legislation in the Convention, then the POC should not be authorized to do by Regulation.

Draft Proposal U2

Amendment to Convention article 37bis defining the authority of the POC to adopt Regulations implementing the Convention

Convention – Proposal

Article 39

Reservations at Congress

UNITED STATES OF AMERICA

Amend to read as follows [boldface indicates new text]:

- 1 As a general rule, any member country whose views are not shared by other member countries shall endeavour, as far as possible, to conform to the opinion of the majority.
- 2 Reservations to any article of the present Convention **may** be submitted to Congress as a Congress proposal written in one of the working languages of the International Bureau and in accordance with the relevant provisions of the Rules of Procedure of Congresses.
- 3 **Any member country may also, during Congress, reserve its right to make reservations as specified in its declaration when signing the final acts until such time as its instrument of ratification, acceptance, or approval of or accession to the Convention has been notified to the International Bureau.**
- 4 In principle, reservations shall be applied on a reciprocal basis between the reserving member country and the other member countries.
- 5 Reservations to the present Convention **made at Congress** shall be inserted in the Final Protocol to the present Convention.
- 6 **An up-to-date compendium of reservations to the present Convention filed after Congress adjourns shall be maintained and published regularly by the International Bureau.**

Conforming amendments

See note 4, below.

Notes

1) A “reservation” allows a member country to agree to the Convention generally while declining to accept the application of a specific provision. The 2004 and 2008 UPU Congresses introduced extraordinarily strict requirements for reservations to the Convention.

These provisions were prompted, in part, by a U.S. reservation to the terminal dues provisions of the 1999 Universal Postal Convention. At the 1999 Congress, the U.S., with a hopeful eye on the upcoming round of WTO negotiations, reserved “the right to implement these terminal dues agreements in accordance with the provisions adopted in negotiations involving the General Agreement on Trade in Services.” The reservation, in turn, prompted more than 40 countries to file a “counter-reservation” asserting right to hold the U.S. to the UPU terminal dues provisions regardless of U.S. commitments in future trade agreements. This debacle was due to some extent to the very short time available for discussing reservations that, under UPU rules, must be filed at Congress.

According to current UPU practice, Convention article 39 requires that a reservation (1) must be submitted during Congress; (2) must be an “absolute necessity [with] proper reasons given”; (3) must be approved by a majority of delegates; and (4) may be rejected (or presumably held invalid in arbitration) if “incompatible with the object and purpose of the Union.” This procedure makes it virtually impossible for a UPU member country to comply with its national laws if they do not conform to the predispositions of a majority of UPU member countries — for example, a country whose postal laws require that rates are based on costs, or whose competition laws prohibit price-fixing, or whose trade laws prohibit discrimination based on national origin. A strict reservations policy discourages wide participation in a multilateral convention because potential signatories are faced with a “take or leave it” decision with respect to the convention as a whole.

The reservations policy of the International Telecommunications Union is more flexible. A member country may assert reservations at any time up to its final ratification, i.e., the final approval by its government after the end of a conference. A reservation does not have to be approved by a majority of ITU members. Nor does it have to meet the tests of “absolute necessity [with] proper reasons given” and “compatible with the object and purpose of the Union.”

2) The restrictive UPU requirements are omitted in the article as a whole. Paragraph 3 adds the post-Congress reservation procedure of the ITU as an alternative to present at-Congress procedure of the UPU, set out in paragraph 2.

3) Paragraph 4 retains the current UPU provision which states that reservations should normally be interpreted as having reciprocal effect. This is the customary practice in international law. For example, if X declines to be bound by provision P, then another signatory country Y is not obliged to give X the benefit of P in relations with X.

4) This proposal might be challenged under article 1bis of the UPU Constitution. This article

is a list of definitions of terms. However, the definition of “reservation,” introduced in the 2008 Congress, could be interpreted to provide substantive requirements as well as defining the term. Article 1bis(1)(8) of the Constitution provides as follows:

1 For the purpose of the Acts of the Universal Postal Union, the following terms shall have the meanings defined below: . . .

1.8 Reservation: an exemption clause whereby a member country purports to exclude or to modify the legal effect of a clause of an Act, other than the Constitution and the General Regulations, in its application to that member country. Any reservation shall be compatible with the object and purpose of Union as defined in the preamble and article 1 of the Constitution. It must be duly justified and approved by the majority required for approval of the Act concerned, and inserted in the Final Protocol thereto.

If so, the industrialized countries may be forced to reconsider participation in the UPU. Changing the Constitution is extremely difficult. An amendment requires approved by two thirds of the member countries of the Union having the right to vote.

Draft Proposal U3

Congress resolution establishing an independent High Level Group of Government Officials to develop a plan for restructuring the UPU to separate governmental and operational functions

Proposal of a general nature

UNITED STATES OF AMERICA

Resolution [boldface indicates new text]

Establishing a High Level Group of Government Officials to develop a plan for reforming the institutions of the Union to achieve a complete separation of governmental and operational/commercial functions

Congress,

In view of

the rapidly changing postal markets and business environment influenced by globalization, market liberalization, regulation, and more sophisticated customer demands, [C9/2012]

Noting

a general decline in letter volumes [C44/2012] and, at the same time, the growth potential of UPU lightweight package services and the importance of security, transport and customs to the performance and competitiveness of those services, [C32/2012]

Considering

that the 21st century is the information society era, in which various forms of Internet-based economic activities are developing at unprecedented speed, and that the explosive development of e-commerce is changing people's way of life, [C33/2012]

Considering also

that demand for cross-border e-commerce transactions is increasing significantly as a result of the rapid development of e-commerce, and that there is huge potential for developing markets and increasing profit margins and that Posts are actively exploring ways of becoming main providers of cross-border e-commerce solutions, [C33/2012]

Bearing in mind

that the international postal market is increasingly characterized by liberalization, deregulation,

and rising customer expectations, in addition to growing competition from technological substitution and private competitors, as well as between the public operators of member countries, [UPU Postal Operators Statement of Values]

Bearing in mind also

that many member countries are transforming their old designated operators into commercial entities, and introducing competition into the letter-post market, [C38/2012]

Bearing in mind also

that in liberalized markets, designated operators may find it advantageous to collaborate with, and use the services of, private sector commercial operators for the delivery of postal items, [C56/2008]

Bearing in mind also

that the fast-changing internal and external environment, which has led member countries to accelerate postal reform in recent years, and prompted an increasing separation of regulatory and operational functions [C13/2012]

Recognizing

that a 2010 study of the global market for conveyance international letters, and lightweight parcels and express mail service items, prepared for the Postal Operations Council by Adrenale Corporation, estimated that in 2008 the share of designated operators was about 80% in volume and 37% of revenues and that this represented a sharp decline from in 1998 when the designated operators' share was about 90% in volume and 48% in revenue;

Recognizing also

that the Adrenale report concluded that in 2008 almost three-quarters (by revenue) of the global market for conveyance international letters, and lightweight parcels and express mail service items was provided by just five operators, of whom two were wholly or partly privatized designated operators and two were non-designated operators;

Recognizing also

that, although the Postal Operations Council did not update the 2010 Adrenale study in the last cycle, the designated operators' share of the global market has likely continued to decrease while market concentration has likely continued to increase;

Recognizing also

that a 2010 study of the impact of new market players in the postal sector on the Union and its mission and activities, prepared for the Council of Administration by Pricewaterhouse-Coopers, concluded that 160 of 182 member countries surveyed had separated the

designated operator from government and that 63 member of these countries, accounting for the great majority of international mail, had taken the further step of establishing an independent regulator;

Recognizing also

that the 2010 PricewaterhouseCoopers study called attention to an increasing trend for designated operators to participate in bilateral agreements and multilateral agreements outside of the framework of the Union to achieve commercial, operational, and legal objectives which could be adequately achieved within the Union's legal framework;

Recognizing also,

that the fundamental recommendation of the PricewaterhouseCoopers study was that the Union should be restructured to achieve "a clear separation of governmental, regulatory and operational roles";

Recognizing also

that the permanent bodies of the Union have have continuously studied the need for separation of governmental and regulatory functions since the establishment of the Group of Postal Experts by the 1989 Washington Congress but that they have not developed a satisfactory plan for consideration by Congress that achieves a clear separation of governmental, regulatory and operational roles;

Recognizing also

that for more than 20 years the restricted union in Europe has successfully governed the regional postal sector after implementing institutional reforms that provide a clear separation of governmental, regulatory and operational roles;

Concludes

that the 27th Congress of the Union, to be convened in 2020, should have before it for consideration, in addition to any other proposals relating to reform of the Union, a comprehensive plan, drawn up by independent government officials, to adapt the organization of the Union to the needs and realities of the 21st century by, inter alia, restructuring the Union to achieve a clear separation of governmental, regulatory and operational roles;

Appoints

_____ as the chairman of a High Level Group of Government Officials which shall be composed of the chairman and 25 additional members, as follows:

- one official or independent expert appointed by each government of the G-20 Group of countries;

- one official or independent expert appointed by each of five countries which are selected by the chairman and the G20 members from among the member countries of the Union to represent the views non-G20 countries;

Earnestly requests

that each such country ensure that its appointee is (1) competent in matters of international law and regulatory practice generally and (2) without an interest in or relationship with a designated operator or other provider of international delivery services which could call into question the independence or impartiality of the work of such person or the High Level Group itself;

Charges

the High Level Group with the task of preparing a comprehensive plan for reforming the institutions of the Universal Postal Union that achieves the following criteria as completely as practicable:

- that the body that exercises governmental and regulatory functions shall
 - be composed of government officials without an interest in or relationship with a designated operator or other provider of international delivery services;
 - be legally separate from and operationally independent of the body that exercises commercial and operational functions of the Union;
 - continue to contribute to the attainment of the noble aims of international collaboration in the cultural, social and economic fields,
 - foster transparency, impartiality towards affected parties, and efficiency of operation in accordance with the best practices of other similar inter-government organizations;
- that the body that exercises commercial and operational functions shall
 - be composed of officials of designated operators and, where appropriate, non-designated operators;
 - have full authority, acting within the legal framework established by the governmental body of the Union and by other international and national laws, to stimulate the lasting development of efficient and accessible universal postal services of quality in order to facilitate communication between the inhabitants of the world by:
 - guaranteeing the free circulation of postal items over a single postal territory composed of interconnected networks;

- encouraging the adoption of fair common standards and the use of technology;
- ensuring cooperation and interaction among stakeholders;
- promoting effective technical cooperation;
- ensuring the satisfaction of customers' changing needs;
- that the plan should define the relationships between the two bodies and include such other provisions and recommendations as the High Level Group deems appropriate.
- that the plan shall be presented to the Council of Administration and the Postal Operations Council no later than July 1, 2018, in order to give both bodies adequate time to consider implications of the plan in preparation for the 27th Congress;

Requests further

that, in order to ensure the independence of the High Level Group, that each country appointing a member to the Group provide such leave from other duties and such financial and staff support as that member may require for service in the Group;

Enjoins

the Council of Administration, the Postal Operations Council, the Consultative Committee, and the International Bureau to provide the High Level Group with whatever assistance and support the High Level Group considers necessary and appropriate.

Notes

1) The initial observations (to the last “bearing in mind”) recognize the changing market conditions and legal framework and, in particular, the increasing focus of designated operators on competitive international package delivery services. These are copied substantially verbatim from resolutions adopted by the 2012 Doha Congress or, in few cases, earlier congresses. References to the original resolutions are provided in brackets. These are the same as in the resolution set out in Draft Proposal C2.

2) The “recognizes” clauses lay the groundwork for appointing a High Level Group of Government Officials to develop a plan for reorganizing the UPU that will provide, as PAEA declares, “a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services.” Not only is this a statutory goal of the PAEA, but since 1989 study after study for the UPU has recognized the radical shift from a network of government monopolies to a market of competitive delivery services and the corresponding need to better separate governmental and operational functions. Indeed, more than 20 years ago, Europe reformed its “restricted union” by creating the European Conference of Postal Regulators and PostEurop. More recently, the

2010 PricewaterhouseCoopers study for the CA's Reform of the Union Project Group, drawing on data from the 2010 Adrenale study, amply made the case for its recommendation for "a clear separation of governmental, regulatory and operational roles." In all cases, however, such initiatives have been blocked by the officials of the DOs in the CA, POC, and International Bureau.

3) The "appoints" and "instructs", etc., clauses create the High Level Group. According to the proposal, the first step would be to appoint a chairman who would act as the direct representative of Congress. This person could be a government official who is well known to the delegates in Congress, versed in institutional issues, and yet reasonably independent. Alternatively, this person could be a well respected figure from the world of intergovernmental organizations outside the UPU. In addition to the chairman, the HLG should include government officials from the leading countries of the world. The set of G-20 countries appears to be a plausible set of such countries. In addition, the HLG should include additional members who can represent the needs of smaller countries.

According to the proposal, in developing a new structure for the UPU, the HLG should take care that the governmental and operational bodies are capable to continuing the basic missions of the UPU. The governmental body should be able to "continue to contribute to the attainment of the noble aims of international collaboration in the cultural, social and economic fields." The operational body should be able to maintain "the free circulation of postal items over a single postal territory composed of interconnected networks; encouraging the adoption of fair common standards and the use of technology; [etc.]." These phrases are taken from the Preamble to the UPU Constitution. Even at this abstract level, the Preamble reflects the dual nature of the UPU: part public policy and part advancement of postal operations.

The proposal would require a report from the HLG by July 1, 2018, in order to allow member countries and UPU institutions sufficient time to prepare for the 2020 Congress.

The work of the HLG should not be demanding for members, either in time or expenses. In order to ensure independence of the HLG, it is proposed that member countries cover the costs and staffing of High Level Group.